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# Education as a "Necessary"

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## EDUCATION AS A "NECESSARY."\*

By Harry R. Trusler.†

### Parental Duty to Furnish an Education.

"The last duty of parents to their children," says Blackstone, "is that of giving them an education suitable to their station in life; a duty pointed out by reason and of far the greatest importance of any. Yet the municipal laws of most countries seem to be defective in this point, by not constraining the parent to bestow a proper education upon his children. Perhaps they thought it punishment enough to leave the parent, who neglects the instruction of his family, to labor under those griefs and inconveniences which his family, so uninstructed, will be sure to bring upon him."<sup>1</sup>

If a parent refuses to educate his children, there is no action known to the common law whereby he can be forced to do so.<sup>2</sup> If, having means, he turns his *helpless* children as mendicants upon the community, or by depriving them of food, clothing, or shelter, causes injury to their health, or perhaps their death, he is liable criminally at common law,<sup>3</sup> but no criminal liability is recognized for his refusal to educate them. It is true, if a parent of means voluntarily educates his child, he later cannot recover the money so expended from the child's estate. Thus a father, as guardian, will not be allowed reimbursement out of a small estate of his daughter, for the money expended for her board, tuition and expenses at college, when during the time of such expenditure he was a member of Congress and able to educate her.<sup>4</sup>

On the other hand, if a parent is unable to educate his children suitably to their fortune, the chancery court, on a proper application, will make an allowance to him out of their separate property, either for their future education and maintenance, or as a reimbursement to him for past maintenance; and in determining the

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<sup>1</sup> Bl. Com. 451.

<sup>2</sup> Peck's Domestic Relations Section 109; 44 Mo. App. 308.

<sup>3</sup> Wharton's Crim. Law, 11th Ed., Sections 1831-1835.

<sup>4</sup> 7 N. Y. S. 942; 35 N. J. Eq. 105; 85 N. C. 500.

question of the father's ability, it is proper to consider the amount of his estate, the number of his children, the condition of his family, his expenses and income, and the amount of his children's fortune.<sup>5</sup> But the admission by the children of their father's inability to maintain and educate them is not sufficient; the question must be inquired into and determined by the court.<sup>6</sup>

The common law rule, it should be noticed, gives the father the paramount right to superintend the education and nurture of his children.<sup>7</sup> From this it follows that a child has no legal right to an education different from what his parent is willing to furnish him. Likewise, the father has a right to direct and regulate the religious instruction that his child receives, provided the tenets of such religion do not inculcate violations of the laws of the land, and courts will not interfere with this right unless there is an abuse of parental authority, such as compelling the child to become a member of a particular religious denomination.<sup>8</sup>

### Liability of Infants For Education as a "Necessary."

Should an infant contract for necessities, it may be the foundation of an action against him for the reasonable value of the necessities furnished. If credit is extended to the parent, or if the parent is supplying the child with necessities, the child cannot be held for them; and where the child lives with his parents, there is a *prima facie* presumption that he is supplied with necessities.<sup>9</sup> It follows, therefore, that an infant under no circumstances can be held for educational services where for aught that appears he resides with a parent or guardian able and willing to give him an education, and in defiance of parental authority he perversely has taken his own course.<sup>10</sup> Whether articles or services come within the class of necessities is a question for the court; but whether in fact they are necessities under the circumstances of a particular

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<sup>5</sup>34 Ala. 15; 41 Ala. 240; 13 S. W. 370; 26 N. E. 662.

<sup>6</sup>18 N. J. 303.

<sup>7</sup>27 Barb. N. Y. 9.

<sup>8</sup>29 Cyc. 1586.

<sup>9</sup>2 Page on Contracts, Sections 865, 870.

<sup>10</sup>99 N. E. 722.

case generally is a question for the jury.<sup>11</sup> Subject to these limitations, however, a child is liable for the necessities that he obtains; and the question consequently arises as to what extent his education may be deemed a necessary.

A trade education,<sup>12</sup> a course in bookkeeping,<sup>13</sup> a course in pharmacy,<sup>14</sup> and a common school education,<sup>15</sup> have been held to be necessities; but not a collegiate,<sup>16</sup> nor a professional education,<sup>17</sup> nor a correspondence course in "Complete Steam Engineering" in the absence of special circumstances.<sup>18</sup> Thus, in a suit by the college to recover its quarter-bills from a minor student, judgment was denied on the ground that a college education is not a necessary for which an infant may bind himself, but it is otherwise as to a common school education.<sup>19</sup> For the same reason, money loaned an infant to enable him to acquire a medical education cannot be recovered.<sup>20</sup> But an agreement with a minor to give him board, clothes and schooling in payment for his labor, in the absence of fraud or undue advantage, cannot be repudiated by the minor after it has been performed.<sup>21</sup> Likewise an infant's board bill while attending school is included among the necessities for which he may be compelled to pay;<sup>22</sup> and a minor who leases rooms for a year while attending college is bound to pay for them as a necessary so long as he occupies them. He may terminate the lease at any time, however, without further responsibility, as an infant may avoid his contracts and is not liable for necessities which he refuses to take.<sup>23</sup> Similarly, a minor may disaffirm a contract for a course in pharmacy and recover the unearned portion of the money paid in advance, where he leaves the school before the completion of the course. "Were the rule otherwise," said the court, "a con-

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<sup>11</sup>46 Am. Dec. 704; 3 Am. Dec. 255; 36 Am. Dec. 296.

<sup>12</sup>78 Am. St. Rep. 844.

<sup>13</sup>53 Atl. 315.

<sup>14</sup>102 N. W. 839.

<sup>15</sup>42 Am. Dec. 537; 1 McCord. S. C. 572; 5 Rich. Eq. S. C. 274.

<sup>16</sup>42 Am. Dec. 537.

<sup>17</sup>35 Am. Rep. 574; 3 Brev. S. C. 194.

<sup>18</sup>99 N. E. 722.

<sup>19</sup>42 Am. Dec. 537.

<sup>20</sup>32 Am. Rep. 574.

<sup>21</sup>9 Mich. 274.

<sup>22</sup>12 L. R. A. 859.

<sup>23</sup>25 L. R. A. 618.

tract for necessities to be supplied in the future might be enforced to the great injury of the infant, because of a change in his condition which rendered the things no longer necessities.”<sup>24</sup>

As the higher education of the people becomes more general and its desirability better recognized, it cannot be doubted that the courts will consider not only a common school education, but also a collegiate or professional education, to come within the class called “necessaries.” Thus in 1901 the Supreme Court of Rhode Island said: “A common school education is undoubtedly necessary, and under favorable circumstances a collegiate education may also be. Whether tutoring in vacation can be said to be one of the necessities is more doubtful.”<sup>25</sup> Similarly, in 1912, the New York Court of Appeals, in stating that a professional or classical education has been held not to come within the scope of necessities, declared: “Still circumstances not found in the cases cited may exist where even such an education might properly be found a necessary as a matter of fact.”<sup>26</sup> As a distinguished writer has well observed: “The propriety of denying that a collegiate or a professional education may not be a necessary for one not possessed of wealth, considerable social standing, or marked ability, is very doubtful in this country. It places preparation for teaching or for other learned professions on a less favored footing than preparation for a trade or for business life. In this country, at least, all honest occupations should be equally honorable and equally favored by the law.”<sup>27</sup>

### Liability of Parents For Education as a “Necessary.”

Generally speaking a parent is liable to third parties for necessities furnished his minor child, when he has expressly or impliedly authorized the child to procure them, or later has agreed to pay for them, or when the child, not being in fact supplied with necessities, is away from home with the parent's consent or with a legal excuse, or perhaps even when the child is at home, in very clear cases of omission to furnish them.<sup>28</sup> Some courts, however, declare that a

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<sup>24</sup>102 N. W. 839.

<sup>25</sup>53 L. R. A. 192.

<sup>26</sup>99 N. E. 722.

<sup>27</sup>2 Page on Contracts, Section 867.

<sup>28</sup>2 Page on Contracts, Section 835.

third person who supplies an infant with necessities, cannot in the absence of statute maintain an action against the parent, unless the latter has expressly or impliedly agreed to pay for them; other courts, occupying a middle ground, extend the parent's liability to cases where he has deserted his family or by cruel treatment has driven his minor child away from home.<sup>29</sup> The great preponderance of authority holds the parent responsible for necessities furnished his minor child where he has cast him off without them.<sup>30</sup> A mother during the lifetime of the father is not bound to support her minor child,<sup>31</sup> but after the death of the father she is the head of the family and is bound to do so if she is able.<sup>32</sup>

It is evident that where a third person furnishes a child with an education with the father's knowledge and consent, the latter is bound to reimburse such person for his outlay.<sup>33</sup> It also is true that an infant having no guardian and living with his mother, a widow, and going to school in the neighborhood, will be presumed to be sent by her, if the contrary is not shown.<sup>34</sup> In attempting to hold a parent for educational services furnished his child, it is helpful to know that the payment of prior bills for like services by the parent will justify a finding that the services in question were impliedly authorized,<sup>35</sup> and the fact that the father permitted his son to bring home some of the articles he has obtained is some evidence of the ratification of his contract but is not conclusive.<sup>36</sup> Slight evidence is sufficient to establish a parent's authority to his minor child to purchase necessities for himself;<sup>37</sup> and a father having notice that his minor son is running an account is liable therefor, unless he objected at the time, although the articles are not necessities.<sup>38</sup>

But where the father consents to the furnishing of educational services to his child, or ratifies his child's contract therefor, he is responsible on the theory that he has himself made the contract

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<sup>29</sup>Note, 12 L. R. A. 861; Clark and Skyles on Agency, Section 77.

<sup>30</sup>Peck's Dom. Rel., Section 109.

<sup>31</sup>1 Am. St. Rep. 307.

<sup>32</sup>8 Am. Dec. 101.

<sup>33</sup>4 Md. Ch. 149; 44 Am. Dec. 409.

<sup>34</sup>11 Ala. 497.

<sup>35</sup>17 N. Y. S. 500.

<sup>36</sup>22 Atl. 35.

<sup>37</sup>44 Am. Dec. 409.

<sup>38</sup>34 Am. Dec. 270.

through the child as his agent. Consequently his liability in such cases is no evidence that the given education is a necessary for his child or that he is under any quasi-contractual obligation to pay for educational services furnished his child as alleged necessities by third persons. Is a parent liable for educational services supplied to his child as alleged necessities in the absence of the parent's express or implied consent? In the absence of statute, he would not be held liable by any court: (1) if the education in question is not in fact necessary; or (2) if he is willing to furnish an education, although of a character not agreeable to the child; or (3) if he is not financially able to educate him; or (4) if the child is living at home, except perhaps in very extreme cases.

A person furnishing alleged necessities to an infant acts at his peril, and in a suit for the recovery of their reasonable value from the parent must prove affirmatively every element essential to his cause of action.<sup>39</sup> Where the infant is *sub potestate parentis* there must be a clear and palpable omission of duty to furnish necessities in order to authorize a third person to act for the parent and charge the expense to him.<sup>40</sup> Thus a father has been held not liable for services rendered during vacation in tutoring his minor son, who lives with him and is supported by him, where the father is not consulted about and does not consent to the employment. The court doubted whether such tutoring was a necessary, and added that the intimate relation of tutor and pupil should not have been established without allowing the father to exercise his choice and judgment in the matter.<sup>41</sup>

As we have seen, the courts do not agree as to when a parent is liable to third parties for necessities furnished his minor child without his consent, and a few deny his liability altogether. But under circumstances where a court holds that a parent is liable for ordinary necessities supplied to his minor child without his authority, he should be held in principle for an education furnishes his minor child without his consent, if the education is in fact a necessary as already explained. Thus where an infant child escaped from its father through fear of personal violence and abuse, and

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<sup>39</sup>7 Am. Dec. 395; 36 Am. Dec. 538.

<sup>40</sup>7 Am. Dec. 395.

<sup>41</sup>53 L. R. A. 192.

could not safely live with him, the father was held liable for necessary support and education furnished to the child by a stranger without the father's consent.<sup>42</sup> A similar view also was expressed in 1902 by the Supreme Court of Rhode Island. Here it appears that a father deserted his wife and children, leaving them with his mother-in-law, who supported them. Later he sued his mother-in-law on a promissory note. As a defense she interposed a set-off one of the items thereof being \$84.10 for tuition, books, etc., paid by her in sending his minor daughter to a commercial school to learn bookkeeping, so that she might be enabled thereby to earn her own living. The father objected to this item, on the ground that it was not in the line of necessities for which he was liable. In granting a new trial, the court said: "If evidence shall be produced from which the jury can intelligently estimate the father's means, we think that it should be left to them to say whether the schooling furnished was not reasonably necessary and whether the father is not liable for the expense incurred by the defendant in furnishing it. That a father who abandons his minor children is liable to those who furnish necessities for their support upon his credit is a proposition too well established to be questioned."

Considering under what circumstances an education may be regarded as a necessary for an infant, the court continued: "Whether a college or a strictly professional education could be classed with necessities under any circumstances, we are not called upon to decide. But that such an education and training as will fit one for the ordinary duties of life in the sphere in which he moves, and enable him to earn a respectable and honest living in his chosen vocation, should be so classed we have no doubt. And we do not agree with the contention of plaintiff's counsel that, simply because the state, through its public school system, furnishes the facilities for a common school education, the father cannot be held liable for anything in the way of supplemental or additional training for the child. This must also be left to depend upon the circumstances of the case. If the child lives in a city like Providence, for instance, where, under its very superior system of public schools, which system includes both mental and manual training, he can obtain at the pub-

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<sup>42</sup>3 Am. Dec. 255.



lie expense an education which is probably equal, if not, indeed, superior, in practical value to a college education of a century ago, it may, perhaps, be doubted whether the father could be legally held liable for anything in addition thereto in the way of educational training. But where, as in the case at bar, the child lives in a country town, the schools of which do not furnish, and cannot be expected to furnish, those facilities for a broad education, including a business or commercial training, which many city schools do furnish, we do not think it would be reasonable to hold that the father, by reason of the existence of public schools in the town, is necessarily relieved from all liability for the additional training of his child."<sup>43</sup>

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<sup>43</sup> 53 Atl. Rep. 315.